

PORT OF STOCKTON

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September 30, 2011

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Transmitted via email

PORT OF STOCKTON COMMENTS REGARDING THE DELTA STEWARDSHIP COUNCIL'S FIFTH STAFF DRAFT DELTA PLAN

The Port of Stockton (Port) appreciates the opportunity to submit comments on the Delta Stewardship Council's (DSC) Fifth Staff Draft Delta Plan (Draft Delta Plan). The Delta is essential to the Port's ability to expand economic development and create jobs within the City of Stockton and throughout San Joaquin County through international and domestic trade. The governance provisions contained in the Draft Delta Plan appear to have far reaching implications that could severely hinder the Port's overall economic benefits to the region into the future.

I. INTRODUCTION

The Port of Stockton is a major job generator in the Central Valley, creating significant family wage jobs in an area where unemployment presently approaches or exceeds 20 percent. The Port provides family wage jobs in two ways. First, significant union job opportunities are present from loading and unloading cargo at the docks. Second, many tenants have substantial maritime activities and use Port buildings and warehouses for manufacturing, assembling and storing cargo and materials. The Legislature has found and declared that ports "ensure that inland as well as costal resources are preserved and that orderly economic development proceeds within the state." Pub.Res.C. §30001.2.

As an inland port, the Port of Stockton faces geographic and competitive disadvantages in relationship to other ports and compensates for these disadvantages by offering a skilled work force, highly competitive rates and a practical and efficient governance process. Two aspects of the Port's plan to be

competitive are: (1) continued maintenance dredging of the shipping channels and (2) an efficient governmental decision-making process providing certainty and comprehensive, but speedy, review of economic decisions affecting potential tenants of the Port.

The Federal Government, realizing the critical role played by the Port in economic development, has substantially enhanced the Port's economic development activities. In June 2000, the Federal Government conveyed the nearly 2,000 acre West Complex to the Port with the stipulation that the land be used for economic development and job creation. Subsequently, this year, the Federal Government awarded a \$13.9 million grant to Stockton to develop a marine highway barge program to transport cargo to and from the Port of Oakland thereby by-passing the traditional method of transporting cargo by trucks. In the past ten years the private sector has invested more than \$350 million in new facilities at the Port. The combined Port/Private Sector effort produced over 3,800 direct construction and full time family wage jobs.

The Draft Delta Plan's proposed governance model pivots on the notion that Covered Actions, generally any government decision implicating CEQA, must include a certificate of consistency with the Delta Plan. The local agency's finding that the Covered Action is consistent with the Delta Plan is subject to review by the DSC. This analysis considers the consequences of an additional layer of regulatory review to the Port's overarching public policy objective of enhancing economic development and job opportunities in the Central Valley.

II. THE INTERACTION BETWEEN PORT ACTIVITY AND DELTA PLAN GOVERNANCE PROCEDURES

The governance process, described in chapter three of the Draft Delta Plan, may adversely affect four aspects of the Port's operation that are central to economic growth and job creation. These four areas are:

- Regular maintenance dredging (this involves both channel and dockside dredging and depositing of the dredged materials)
- Channel deepening dredging (this includes depositing the dredged materials)
- Approval of leases with private and public tenants (Port lease decisions are subject to CEQA)
- Anticipated development of the portion of Roberts Island located in the secondary zone

III. DETAILED ANALYSIS OF PORT ACTIVITY AND POSSIBLE SOLUTIONS

A. REGULAR MAINTENANCE DREDGING.

A.1. PORT'S ANALYSIS. In collaboration with the U.S. Army Corps of Engineers (USACE), maintenance dredging of the shipping channels is annually conducted for purposes of maintaining the authorized channel depth. (From a navigational perspective the depth of the channel is only as deep as the highest point. Hence as silt collects the channel's actual navigational depth decreases.) There is a direct and immediate relationship between completing the annual maintenance dredging and economic and job growth at the Port of Stockton. Due to environmental considerations this dredging can only be conducted during a brief window of time each year. Adding a potential appeal period, which consumes up to five months, potentially closes the window of time available to conduct this necessary dredging. It is important to underscore that maintenance dredging has a secondary effect of directly improving flood control by increasing the capacity of the navigational channels. This secondary effect arguably removes maintenance dredging from the definition of covered action because it does not satisfy the fourth element defined as a Covered Action.

(The fourth element provides: "Will have a significant impact on the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta." See Draft Delta Plan at 57. However, the element contains a facial ambiguity. Maintenance dredging is a potentially positive rather than adverse significant impact on flood control programs. Unfortunately the criterion does not expressly distinguish between positive and negative significant effects.)

Note also, materials dredged are frequently used to improve the stability of Delta levees. Thus, providing material to stabilize levees is a second and independent benefit of maintenance dredging.

A.2. PORT'S PROPOSED SOLUTION. The Draft Delta Plan acknowledges that some maintenance activity, such as levee maintenance, is exempt from the definition of Covered Actions. See Draft Delta Plan at 54. In fact, as noted earlier, Port dredge material is typically used as part of Delta levee maintenance activities.

While not directly applicable, the California Coastal Act excludes maintenance dredging from the Commission's jurisdiction. The enumerated list of excluded activities includes: "maintenance dredging of existing navigation channels or moving dredged material from those channels of a disposal site outside the coastal zone..." Pub.Res. C.§30610(c).

The Port asks for the report to be revised to include maintenance dredging as an activity exempt from the definition of Covered Actions. This request is consistent with the fourth element of the definition of Covered Action: the maintenance dredging has a positive effect on flood control plans. By exempting maintenance dredging the Port is protected from the uncertainty and potential delay of an appeal to the Council.

B. CHANNEL DEEPENING/DREDGING

B.1. PORT'S ANALYSIS. The USACE periodically seeks funding to deepen the navigational ship channel. Channel deepening is necessary because the size of vessels carrying goods is consistently increasing. The channel deepening project is undertaken to improve international and interstate commerce. As a federal program, the Port believes that superior federal law fully occupies this field of regulation and, therefore, is not subject to this new state regulatory scheme.

B.2. PORT'S PROPOSED SOLUTION. The Report should recognize the Federal character of channel deepening dredging project undertaken by the Federal Government and make it clear that these types of projects are not Covered Actions under the Delta Stewardship Council. Otherwise the Council will almost certainly need to deal with the question of federal preemption in the context of a Federal effort to deepen the navigational channel to enhance international and interstate commerce. It is in the best interest of the Council and Port to resolve this issue now and reduce future uncertainty of the rules and regulations that may apply to future federal dredging projects.

C. THE PORT'S APPROVAL OF LEASES FOR PRIVATE AND PUBLIC ENTITIES.

C.1. PORT'S ANALYSIS. The Stockton General Plan and Zoning Ordinance establishes a Port Zone Classification. Under the Port Zone all authorized land uses are permitted, subject to a lease. (Leases are approved at a Port Commission noticed public hearing.) Furthermore, the Port adopted a Master Plan for the West Complex after conducting a comprehensive process. The Master Plan was approved after the Board of Port Commissioners certified an Environmental Impact Report under CEQA.

A very important factor to counteract the Port's geographic competitive disadvantages involves giving potential tenants assurance that the process to locate at the Port will be timely and efficient. This commitment has proven to be a critical factor in successfully bringing significant job generating businesses to the Port. The additional delay of time imposed by the proposed regulation, essentially suspends the effectiveness of the Port's lease decision for thirty days and even longer if an appeal is filed. It has the unintended consequence of

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reducing the Port's competitiveness among ports, both in California and elsewhere. It will have a substantially chilling effect on business generation activities at the Port.

C.2. **PORT'S PROPOSED SOLUTION.** The Port recommends that the following exception to Covered Actions be adopted: the lease decisions of Special Districts if the Special District complied with CEQA and approved the lease at a noticed public hearing. The Special District shall provide the DSC with: (1) written notification of the time and place to comment on the proposed CEQA document; (2) written notification of the time and place of public hearing set to consider the CEQA document and the project; and, (3) written notification of the day the project was approved or rejected and, the mitigation measures adopted.

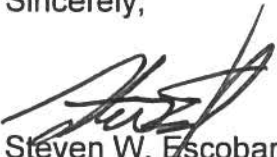
D. ANTICIPATED DEVELOPMENT OF ROBERTS ISLAND.

A portion of Roberts Island, owned by the Port, is located in the secondary zone of the Delta. Roberts Island is regarded as expansion land for the Port's future activities and a Master Plan for developing Roberts Island is in progress. This Master Plan will be subject to CEQA and will be considered at a noticed public hearing before the Board of Port Commissioners. All public notice and public participation requirements will be observed in processing this Master Plan.

Thank you in advance for your consideration of this important matter. The Port of Stockton looks forward to working with you throughout this process and submitting additional comments to the DSC in the future.

Should you have any questions regarding this matter, please contact myself or Jeff Wingfield, Environmental Manager at 209-946-0246.

Sincerely,



Steven W. Escobar

Deputy Port Director, Real Estate & Port Development

c: Port of Stockton Board of Port Commissioners
Richard Aschieris, Port Director
Steven A. Herum, Port Legal Counsel